

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MATTHEW JOHN CAPANIS,
Plaintiff,
v.
ANTHONY BIANUCCI, et al.,
Defendants.

Case No. [15-cv-01457-SI](#)

**ORDER LIFTING STAY AND
DISMISSING ACTION**

Re: Dkt. No. 5

In March 2015, Matthew John Capanis filed this *pro se* civil rights action under 42 U.S.C. § 1983, claiming that a Contra Costa County jail policy that “an inmate can only review DVD evidence with an attorney” interfered with his self-representation rights. Docket No. 1 at 3. He was a pretrial detainee at the time he filed this action.

Upon initial review, the court stayed this action due to the pendency of the criminal case against Capanis. Docket No. 4. The court explained the rule from *Heck v. Humphrey*, 512 U.S. 477 (1994), i.e., if success in the § 1983 action would necessarily demonstrate the invalidity of a conviction, the § 1983 action is barred unless the conviction already been determined to be invalid. Docket No. 4 at 3. The court further explained that, when a pretrial detainee files an action that otherwise would be barred by *Heck* if he had been convicted, the court can “stay the civil action until the criminal case or the likelihood of a criminal case is ended.” Docket No. 4 at 3 (quoting *Wallace v. Kato*, 549 U.S. 384, 394 (2007)). The court then applied these rules to Capanis’ § 1983 action:

Here, the only cognizable claim is that defendants have interfered with Capanis’ Sixth Amendment right, making him choose between self-representation without certain evidence or representation by counsel if he wants access to that DVD evidence. A finding in his favor would necessitate a finding of interference with his Sixth Amendment right to represent himself. Success on his claim that his

1 *Faretta [v. California, 422 U.S. 806 (1975)]* right was interfered with necessarily
2 would invalidate his criminal conviction if one occurs. Capanis' claim should not
3 go forward because his criminal proceedings are still pending; rather, "it is within
4 the power of the district court, and in accord with common practice, to stay the civil
5 action until the criminal case or the likelihood of a criminal case is ended." *See*
6 *Wallace v. Kato*, 549 U.S. at 393-94. Accordingly, the court will stay further
7 proceedings in this matter until Capanis' criminal proceedings have concluded.

8 Docket No. 4 at 3-4.

9 Capanis has filed a motion to lift the stay. Docket No. 5. He reports that he has been
10 convicted in state court, and now would like to go forward with this action.

11 Capanis is half-right: the stay can be lifted but he cannot go forward with this action.
12 Instead, his conviction requires that this action be dismissed. *Wallace v. Kato* explained that a
13 stay is appropriate while a criminal case is pending, and also explained what happens at the
14 conclusion of that criminal case: "If the plaintiff is ultimately convicted, and if the stayed civil
15 suit would impugn that conviction, *Heck* will require dismissal; otherwise, the civil action will
16 proceed, absent some other bar to suit." *Wallace v. Kato*, 549 U.S. at 394. Here, the *Heck* rule
17 applies for the reasons stated in the order staying the case. *See* Docket No. 4. A stay was
18 appropriate while Capanis' criminal case was pending, but now that a conviction has occurred, the
19 *Heck* rule requires that this action be dismissed. Capanis must have his conviction overturned
20 (e.g., on direct appeal, or in state or federal habeas proceedings) before he may file a § 1983 action
21 asserting his claim that the defendants interfered with his Sixth Amendment rights.

22 For the foregoing reasons, Capanis' motion to lift the stay is GRANTED. Docket No. 5.
23 The stay is now lifted. However, the *Heck* rule bars Capanis' § 1983 claim because success on the
24 claim would call into question the validity of his state court judgment of conviction, and that
25 conviction has not yet been set aside. The action must be dismissed.

26 If Capanis wants to challenge the lawfulness of his current custody, the exclusive method
27 by which he may do so in federal court is by filing a petition for writ of habeas corpus.
28 *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). Such a petition should not be filed until he
first exhausts state judicial remedies as to any claim he wishes to present in a federal petition for
writ of habeas corpus.

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For the foregoing reasons, this action is **DISMISSED**. The dismissal is without prejudice to Capanis filing a new § 1983 action for damages if his state court conviction is overturned or set aside. The clerk shall close the file.

IT IS SO ORDERED.

Dated: May 18, 2017



SUSAN ILLSTON
United States District Judge